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OFFICE OF THE ATTORNEY GENERAL

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STATE OF ALABAMA

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Honorable Clarence F. Rhea
Attorney, Town of Steele
930 Forrest Avenue
P. O. Box 8486
Gadsden, AL 35902

Municipalities - Licenses -
Fees - Advertising

State law would permit the imposition of a business privilege license on the following: (1) the operation and maintenance of television, phone and radio antennas, (2) the selling of advertising on said antennas and, (3) the renting or leasing of space in buildings used in conjunction with said antennas. However, the Federal Communications Commission should be consulted on federal pre-emption questions before such license is imposed.

Dear Mr. Rhea:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Can the Town of Steele impose license fees or other charges on persons or corporations that own and/or maintain antennas and one or more buildings in connection with the operation and maintenance of such antennas (located in the

town limits or in the police jurisdiction
of the Town of Steele)?

FACTS AND ANALYSIS

You wish to know whether the Town of Steele can charge, for example, a business privilege license established in Code of Alabama 1975, §§ 11-51-90 and -91, on a person or corporation whose "business" within the corporate limits or police jurisdiction of the town consists of the ownership and/or operation and/or maintenance of radio, television or phone antennas and one or more buildings used in conjunction with such "business." It would appear that under state law, the activity described above establishes a nexus sufficient to meet the requirements of Code of Alabama 1975, §§ 11-51-90 and -91 and that a business privilege license may be imposed by the Town of Steele.

Of course, federal law may be applicable to one or more of the operations described above, particularly if interstate commerce is involved, and may, in fact, pre-empt state law. We, therefore, suggest that prior to imposing such a privilege license you contact the Federal Communications Commission (Wireless Bureau 202/418-0680).

CONCLUSION

State law would permit the imposition of a business privilege license on the business of establishing and/or maintaining and/or operating television, radio or cellular phone antennas, but federal law may pre-empt state law in one or more of these areas.

QUESTION 2

Can the Town of Steele charge a license fee to persons or firms that rent advertising space on antennas used for television, phone or radio communication in and from town limits and police jurisdiction of the Town of Steele?

FACTS AND ANALYSIS

It would appear from the facts presented that the business of selling or renting advertising space on television, radio or phone antennas is one separate and apart from the operation of such antennas and that the business of selling or renting advertising space could be licensed under, for example, Code of Alabama 1975, §§ 11-51-90 and -91.

We are not aware of any federal law governing the selling of advertising on antennas, but clearance should be received from the Federal Communications Commission (Wireless Bureau 202/418-0680) before the levy of such a license.

CONCLUSION

The business of selling advertising space on antennas may be the subject of a business privilege license, if not in violation of federal law.

QUESTION 3

Can the Town of Steele charge a license fee to tenants that rent all or part of the buildings maintained in connection with the use and operation of such television, phone and/or radio antennas?

FACTS AND ANALYSIS

If buildings are rented or leased to others for business purposes other than the operation and maintenance of antennas, then those businesses could be charged a business privilege license for the separate business being operated on the premises. Stated differently, if more than one business is operated in a single building, each business can be charged a separate business privilege license. If your question is whether you could impose a privilege license based on the use of buildings, as opposed to antennas, such a question should be addressed to the Federal Communications Commission (Wireless Bureau 202/418-0680).

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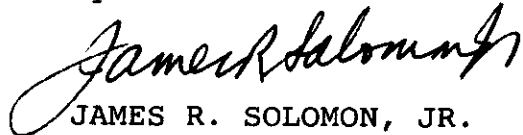
CONCLUSION

If more than one business is operated in a single building, each business may be charged a privilege license under Code of Alabama 1975, § 11-51-90 and -91.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:

A handwritten signature in cursive script, reading "James R. Solomon, Jr.", written in black ink.

JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/CJS/jho
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